

CITY OF NEWPORT BEACH
PLANNING COMMISSION STAFF REPORT

June 9, 2011 Meeting

Agenda Item 2

SUBJECT: Pemstein Residence Minor Use Permit and Variance - (PA2010-173)
2430 Holiday Road
▪ Minor Use Permit No. UP2010-040
▪ Variance No. VA2011- 005

APPLICANT: Harold Pemstein

PLANNER: Erin M. Steffen, Planning Technician
(949) 644-3234, Esteffen@newportbeachca.gov

PROJECT SUMMARY

A minor use permit to allow for the retention of an as-built second dwelling unit to be converted to a senior accessory dwelling unit (AKA "granny unit") and a related variance to allow for the construction of a garage addition to encroach 2 feet into the required 10-foot easterly side setback.

The application also includes ten (10) other variance requests to allow for the retention of the following as-built structures:

1. An 8-foot high arbor with a footprint of 48 square feet that encroaches 13 feet into the 15-foot front setback, where the Zoning Code limits the height of such structures to 9 feet and a maximum footprint of 16 square feet.
2. An 8-foot high arbor with a footprint of 48 square feet that encroaches 10 feet into the westerly 10-foot side setback, where the Zoning Code limits the height of such structures to 9 feet and a maximum footprint of 16 square feet.
3. An 8-foot high arbor with a footprint of 48 square feet that encroaches 10 feet into the 10-foot rear setback, where the Zoning Code limits the height of such structures to 9 feet and a maximum footprint of 16 square feet.
4. An 8-foot high arbor with a footprint of 48 square feet that encroaches 10 feet into the easterly 10-foot side setback, where the Zoning Code limits the height of such structures to 9 feet and a maximum footprint of 16 square feet.
5. A 55-inch high brick wall that encroaches 5 feet into 15-foot front setback, where the Zoning Code limits the height of such structures to 42 inches.
6. An 8-foot high wall that encroaches 10 feet into the westerly 10-foot side setback, where the Zoning Code limits the height of such structures to 6 feet.

7. An 8-foot high wall that encroaches 10 feet into the 10-foot rear setback, where the Zoning Code limits the height of such structures to 6 feet.
8. An 8-foot high wall that encroaches 10 feet into the easterly 10-foot side setback, where the Zoning Code limits the height of such structures to 6 feet.
9. An 8-foot-3-inch high fireplace that encroaches 8 feet into the westerly 10-foot side setback, where the Zoning Code limits the height of such structures to 6 feet.
10. A 129-square-foot (footprint of 148 square feet under roof), 11-foot-4-inch high storage building that encroaches 5 feet into both the 10-foot easterly side setback and 10-foot rear setback, where the Zoning Code limits the height of such structures to 6 feet.

The application also indicates the existence of an 8-foot high arbor with a footprint of 48 square feet that encroaches into the required front and easterly side setback, where the Zoning Code limits the height of such structures to 9 feet and a maximum footprint of 16 square feet. The applicant has indicated that this arbor will be removed. Therefore, it is not included in the variance request.

RECOMMENDATION

- 1) Conduct a public hearing; and
- 2) Adopt Resolution No. ____ approving Minor Use Permit No. UP2010-040 for the granny unit and approving Variance No. VA2011-005 only for the construction of the garage addition to encroach 2 feet into the required 10-foot easterly side setback, while denying the encroachment request of the arbors, walls, fireplace, and storage building (Attachment No. PC 1).

INTRODUCTION

Project Setting and Background

The subject property is a 9,450-square-foot lot located within the R-1-10,000 (Single-Unit Residential) Zoning District. The lot is relatively flat, rectangular in shape, and developed with a nonconforming two-story, 2,695-square-foot dwelling. The existing dwelling is nonconforming because it encroaches into the easterly and westerly required 10-foot side setbacks, 2 feet and 5 feet, respectively. The subject parcel was part of the June 1968 Moden Annexation.

The dwelling has been altered, without the benefit of permits, to create a second dwelling unit within a portion of the three-car garage, which reduced the number of garage spaces from 3 to 1. Access to the second dwelling unit is provided by either of two separate entry doors located on the easterly side of the building within the side setback.

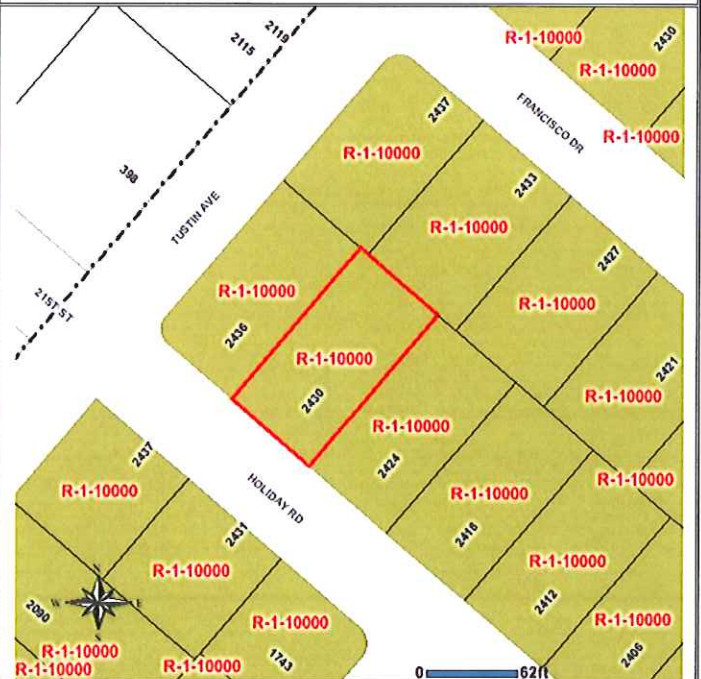
VICINITY MAP



GENERAL PLAN



ZONING



LOCATION	GENERAL PLAN	ZONING	CURRENT USE
ON-SITE	RS-D (Single-Unit Detached)	R-1-10,000 (Single-Unit Residential)	Two-Unit Residential
NORTH	RS-D (Single-Unit Detached)	R-1-10,000 (Single-Unit Residential)	Single-Unit Residential
SOUTH	RS-D (Single-Unit Detached)	R-1-10,000 (Single-Unit Residential)	Single-Unit Residential
EAST	RS-D (Single-Unit Detached)	R-1-10,000 (Single-Unit Residential)	Single-Unit Residential
WEST	RS-D (Single-Unit Detached)	R-1-10,000 (Single-Unit Residential)	Single-Unit Residential

The other lots in the neighborhood are similar in size and shape and are developed with one and two-story, single-unit dwellings. The majority of the homes on these lots are also nonconforming with respect to required side setbacks.

Project Description

The applicant is requesting a minor use permit to retain the as-built second dwelling unit by converting it to a granny unit. The applicant is also requesting to allow or retain several encroachments all of which require variance approval. Due to the large number of these encroachments, staff has separated the discussion into two parts 1) the granny unit and its related garage encroachment and 2) all other encroachments not associated with the granny unit.

DISCUSSION

Granny Unit and Related Garage Encroachment

Granny Unit Minor Use Permit

Development Standards

Pursuant to Section 20.48.200 (Senior Accessory Dwelling Units) of the Zoning Code, specific standards must be met prior to the occupancy of a granny unit. Table 1 below outlines those standards and how the project complies.

Table 1

Standards for Granny Units	Project Compliance
1. Shall comply with the maximum height limits (24 feet for a flat roof and 29 feet for a sloped roof) in the zoning district in which they are located.	<u>Complies:</u> A portion of the existing residential structure, which does not exceed the height limit, will be converted to accommodate the proposed granny unit.
2. Shall comply with the setback requirements (front 15 feet, sides 10 feet, and rear 10 feet) applicable to the zoning district in which they are located.	<u>Complies:</u> A portion of the existing structure, which encroaches 2 feet into the easterly side setback, will be converted to accommodate the proposed granny unit. The creation of the granny unit will not intensify or expand the encroachment.
3. A minimum lot size of 5,450 square feet shall be required in order to establish a granny unit.	<u>Complies:</u> The subject property is approximately 9,450 square feet in area.
4. Each granny unit shall provide a minimum of 600 square feet of floor area and a maximum of 640 square feet as measured from within the surrounding perimeter walls of the unit.	<u>Complies:</u> The proposed granny unit is 625 square feet.

Table 1 - Continued

Standards for Granny Units	Project Compliance
5. <i>The principal dwelling unit or the granny unit shall be continuously occupied by at least 1 person having an ownership interest in the lot.</i>	Complies: Occupancy and ownership verification will take place prior to the final of building permits. The approval of the minor use permit is conditioned so that the principal dwelling unit or the granny unit shall be continuously occupied by at least 1 person having an ownership interest in the lot.
6. <i>At least 1 parking space is required for the granny unit and 2 garage spaces are required for the principal dwelling unit.</i>	Complies: The applicant is proposing a new two car garage for the principal dwelling unit and a carport space for the proposed granny unit. With approval of Variance No. VA2011-005, which is discussed below, the garage will be allowed to encroach 2 feet into the required 10-foot easterly side setback.

Minor Use Permit Findings

Additionally, pursuant to Section 20.52.020 F. of the NBMC, the following findings shall be met to approve a minor use permit for a granny unit:

1. *The use is consistent with the General Plan and any applicable specific plan.*
2. *The use is allowed within the applicable zoning district and complies with all other applicable provisions of this Zoning Code and the Municipal Code.*
3. *The design, location, size, and operating characteristics of the use are compatible with the allowed uses in the vicinity.*
4. *The site is physically suitable in terms of design, location, shape, size, operating characteristics, and the provisions of public and emergency vehicle (e.g., fire and medical) access and public services and utilities.*
5. *Operation of the use at the location proposed would not be detrimental to the harmonious and orderly growth of the City, or endanger, jeopardize, or otherwise constitute a hazard to the public convenience, health, interest, safety, or general welfare of persons residing or working in the neighborhood of the proposes use.*

In summary, staff believes all the findings for approval can be made and supports this determination with the facts outlined in the attached resolution (Attachment No. PC 1). As outlined in Table 1, the proposed granny unit complies with all development standards. The site is located in the Single-Unit Residential (R-1-10,000) Zoning District with a General Plan designation Single-Unit Residential Detached (RS-D), which allows granny units upon approval of a minor use permit. The project will comply with all applicable single-family development regulations, except those existing nonconforming structure conditions, which will not be intensified or expanded. Adequate public and emergency vehicle access, public services, and utilities are provided.

Staff did examine concerns about noise and privacy expressed by the abutting neighbor directly east of the proposed granny unit. The granny unit and adjacent home are approximately 11 feet apart and separated by an existing 6-foot high property line wall. The concerns are due to the increased activity within the side yard due to the location of the second unit's entry doors. However, staff believes the Zoning Code's standards for granny units, including limiting the occupancy to one or two persons, will reduce potential conflicts with the abutting property.

Garage Encroachment Variance

The variance request for the 2-foot garage encroachment is due to the proposed garage addition, which will provide the required parking for the principal dwelling and proposed granny unit. Pursuant to Section 20.40.030 (Requirements for Off-Street Parking), at least 1 parking space is required for the granny unit and 2 garage spaces are required for the principal dwelling unit.

It should be noted that the 2-foot garage encroachment under the previous Zoning Code, which expired in November 2011, was allowed in this district. Pursuant to Section 20.50.030 of the previous Zoning Code, an addition to the principal building was allowed to be constructed in the R-1-10,000 District (formally known as R-1-B-2) to the side yard setback line in effect at the time the principal building was constructed. Since this provision was not included with the updated Zoning Code, the 2-foot garage encroachment now requires a variance. Furthermore, the encroachment requires a variance because there is a limit on the amount of deviation to development standards that can be approved with a modification permit under the current Zoning Code, which went into effect November 2010. Modifications are limited to not more than a ten (10) percent deviation on certain development standards, including encroachments into the required setbacks.

It should also be noted that although the garage addition is proposed to comply with the 15-foot front setback of the R-1-10,000 Zoning District, parking will not be allowed on the driveway. Pursuant to Section 20.40.090 C.3.a (Parking Standards for Residential Uses) parking or storage in required front setbacks areas is only allowed on driveways in front of garages that are setback a minimum of 20 feet from the front property line. Additionally, the site currently only provides a two-car driveway approach and may need to be widened to provide adequate access to the new two-car garage and granny parking space given the reduced distance to the proposed parking as compared to the existing. The width of the driveway approach will be subject to standard Public Works requirements and no impediments are known.

Variance Findings

Pursuant to Section 20.52.090.F of the Zoning Code, the Planning Commission must make the following findings before approving the aforementioned variance:

1. *That there are special or unique circumstances or conditions applicable to the subject property (e.g. location, shape, size, surrounding, topography, or other physical features) that do not apply generally to other properties in the vicinity under an identical zoning classification.*
2. *That strict compliance with Zoning Code requirements would deprive the subject property of privileges enjoyed by other properties in the vicinity and under an identical zoning classification.*
3. *That the granting of the Variance is necessary for the preservation and enjoyment of substantial property rights of the applicant.*
4. *That the granting of the Variance will not constitute a grant of special privilege inconsistent with the limitations on other properties in the vicinity and in the same zoning district.*
5. *That the granting of the Variance will not be detrimental to the harmonious and orderly growth of the City, or endanger, jeopardize, or otherwise constitute a hazard to the public convenience, health, interest, safety, or general welfare of persons residing or working in the neighborhood.*
6. *Granting of the Variance will not be in conflict with the intent and purpose of this Section, this Zoning Code, the General Plan, or any applicable specific plan.*

Staff believes all the findings for approval of the proposed garage encroachment can be made and supports this determination with the facts outlined in the attached resolution (Attachment No. PC 1). The garage will be constructed in line with the existing building and located 8 feet from the easterly property line. This encroachment will be similar to others in the neighborhood as a majority of the adjacent properties have buildings setback less than the required 10 feet. Under the Zoning Code in effect prior to November 25, 2010, additions to principal structures were permitted by right provided the additions maintain the setback of the existing structure. The nonconforming setbacks exist throughout the neighborhood as a result of the 1968 annexation and subsequent change to side setback requirements.

Variance Request - Arbors, Walls, Fireplace, and Storage Building

The applicant also requests variance approval to retain ten (10) other as-built accessory structures. These structures were all built without the benefit of permits and encroach into the required setbacks areas. Table 2 below outlines all the requests as well as the related Zoning Code required standards. Photos depicting the items listed below are attached (Attachment PC No. 3). The applicant's attached plans (Attachment No. 2) have also been highlighted with reference numbers that correspond to the numbered items listed below.

Table 2

Applicant's Request to allow for the retention of the following as-built structures:		Zoning Code Requirement						
Arbors	<ol style="list-style-type: none">1. 8-foot high arbor* with a footprint of 48 square feet that encroaches 13 feet into the 15-foot front setback.*2. 8-foot high arbor* with a footprint of 48 square feet that encroaches 10 feet into the westerly 10-foot side setback;3. 8-foot high arbor* with a footprint of 48 square feet that encroaches 10 feet into the 10-foot rear setback; and4. 8-foot high arbor* with a footprint of 48 square feet that encroaches 10 feet into the easterly 10-foot side setback.	<p>Pursuant to Section 20.30.110 D.2.b., Arbors, trellises, and similar garden structures may be allowed to encroach into required front, side, and rear setback area subject to the following limits:</p> <p>(1) The maximum footprint of the structure shall not exceed 16 square feet; and</p> <p>(2) The maximum height of the structure shall not exceed 9 feet.</p>						
Walls	<ol style="list-style-type: none">5. 55-inch high brick wall that encroaches 5 feet into 15-foot front setback.6. 2-foot wood fence extension* mounted on top of the existing 6-foot high block wall, for an overall height of 8 feet that encroaches 10 feet into the westerly 10-foot side setback;7. 2-foot wood fence extension* mounted on top of the existing 6-foot high block wall, for an overall height of 8 feet that encroaches 10 feet into the 10-foot rear setback.8. 2-foot wood fence extension* mounted on top of the existing 6-foot high block wall, for an overall height of 8 feet that encroaches 10 feet into the easterly 10-foot rear setback.	<p>Pursuant to Section 20.30.030 A.1., the maximum height of fences, hedges, and walls is as follows:</p> <table><tr><th>Location</th><th>Maximum Height</th></tr><tr><td>Front setback areas</td><td>42 inches</td></tr><tr><td>Rear and interior side setback areas</td><td>6 feet</td></tr></table>	Location	Maximum Height	Front setback areas	42 inches	Rear and interior side setback areas	6 feet
Location	Maximum Height							
Front setback areas	42 inches							
Rear and interior side setback areas	6 feet							
Fireplace	<ol style="list-style-type: none">9. To retain an as-built 8-foot 3-inch high freestanding fireplace that encroaches 8 feet into the westerly 10-foot side setback.	<p>Pursuant to Section 20.30.110 D.8.b., freestanding fireplaces (gas only) with a maximum height of 6 feet shall be allowed to encroach into the required side or rear setback area provided a minimum 36-inch clear path of travel is maintained adjacent to any habitable structures.</p>						
Storage Building	<ol style="list-style-type: none">10. To retain an as-built 129-square-foot (footprint of 148 square feet under roof) and 11-foot 4-inch high storage building that encroaches 5 feet into both the 10-foot easterly side and 10-foot rear setback.	<p>Pursuant to Section 20.30.110 D.2.a., Accessory structures not more than 6 feet in height and totaling no more than 150 square feet per structure, may be located within a required side or rear setback area other than those abutting an alley.</p>						

*The screen planting growing on the structure further increases the effective height of the element.

Variance Findings

As with the variance request associated with the garage encroachment, the Planning Commission must make the same variance findings listed on page 7 of this report before approving the variance requests outlined in Table 2.

Staff believes the findings cannot be made to support any of the encroachments listed in Table 2. The property is relatively flat, rectangular in shape, and comparable in size to other lots in the neighborhood. The R-1-10,000 Zoning District does have larger side setbacks (10-foot) as compared to most other properties in the City, which have side setbacks between 3 and 6 feet. However, this standard is not a unique characteristic resulting in any necessity to warrant approval for the encroachment of the arbors, the walls, the fireplace, or the storage building. These structures are neither required nor necessary for the enjoyment of a substantial property right. Although, the accessory structures are existing and have not proven detrimental to the property or neighborhood, their existence does not set a precedent for approval.

Furthermore, if desired, the accessory structures can all be (re)designed to comply with the requirements of the Zoning Code. For instance, the footprint of the arbors can be reduced and additional arbors can also be constructed since there is no limit on the number of these structures in the required setbacks. The walls and fireplace can be removed or reduced in height from 8 feet to 6 feet. And, the storage building can be removed or reduced in height from 8 feet to 6 feet or relocated to area not within the required setbacks.

Conclusion

Staff recommends that the Planning Commission approve Minor Use Permit No. UP2010-040 for the granny unit and Variance No. VA2011-005 for the 2-foot garage encroachment. Staff also recommends that the Planning Commission deny the encroachment request of the arbors, walls, fireplace, and storage building because the required findings for approval cannot be made. Additionally, all the aforementioned encroachments that are existing and have been recommended for denial need to be removed from the subject property or redesigned to comply with the development standards of the Zoning Code should the Planning Commission take the recommended action.

Alternatives

The Planning Commission may modify the approval or conditions of approval or deny the minor use permit and/or the variance application.

If the Planning Commission decides to approve any element of the project that staff recommends for denial, the Planning Commission must identify facts in support of the required findings for those elements.

Should the Planning Commission take action on any alternatives, staff will return with a revised resolution for consideration at the next available meeting.

Environmental Review

The project is categorically exempt under Section 15303, of the California Environmental Quality Act (CEQA) Guidelines - Class 3 (New Construction or Conversion of Small Structures). The scope of the work is limited to a garage addition and conversion and alterations of an existing structure to accommodate a granny unit. Also, included in the request is to retain several accessory structures including arbors, walls, a fireplace, and storage building.

Public Notice

Notice of this hearing was published in the Daily Pilot, mailed to property owners within 300 feet of the property, and posted at the site a minimum of ten (10) days in advance of this hearing, consistent with the Municipal Code. Additionally, the item appeared upon the agenda for this meeting, which was posted at City Hall and on the City website.

Prepared by:


Erin M. Steffen, Planning Technician

Submitted by:


Gregg Ramirez, Senior Planner

ATTACHMENTS

- PC 1 Draft Resolution with Findings and Conditions
- PC 2 Project Plans
- PC 3 Project Photos
- PC 4 Applicant's Project Description and Justification Statement

Attachment No. PC 1

Draft Resolution with Findings and Conditions

RESOLUTION NO.

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH APPROVING MINOR USE PERMIT NO. UP2010-040 FOR A SENIOR ACCESSORY DWELLING UNIT AND APPROVING VARIANCE NO. VA2011-005 FOR ONLY THE 2-FOOT GARAGE ADDITION ENCROACHMENT FOR THE PROPERTY LOCATED AT 2430 HOLIDAY ROAD (PA2010-173)

THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH HEREBY FINDS AS FOLLOWS:

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Harold Pemstein, with respect to the property located at 2430 Holiday Road, and legally described as Lot 9 of Tract 2052 requesting approval of a minor use permit and variance.
2. The applicant proposes a minor use permit to allow for the retention of an as-built second dwelling unit to be converted to a senior accessory dwelling unit (granny unit) and a related variances to allow for the construction of a garage addition to encroach 2 feet into the required 10-foot easterly side setback.

The application also includes ten (10) other variance requests to allow for the retention of the following as-built structures:

1. An 8-foot high arbor with a footprint of 48 square feet that encroaches 13 feet into the 15-foot front setback, where the Zoning Code limits the height of such structures to 9 feet and a maximum footprint of 16 square feet.
2. An 8-foot high arbor with a footprint of 48 square feet that encroaches 10 feet into the westerly 10-foot side setback, where the Zoning Code limits the height of such structures to 9 feet and a maximum footprint of 16 square feet.
3. An 8-foot high arbor with a footprint of 48 square feet that encroaches 10 feet into the 10-foot rear setback, where the Zoning Code limits the height of such structures to 9 feet and a maximum footprint of 16 square feet.
4. An 8-foot high arbor with a footprint of 48 square feet that encroaches 10 feet into the easterly 10-foot side setback, where the Zoning Code limits the height of such structures to 9 feet and a maximum footprint of 16 square feet.
5. A 55-inch high brick wall that encroaches 5 feet into 15-foot front setback, where the Zoning Code limits the height of such structures to 42 inches.
6. An 8-foot high wall that encroaches 10 feet into the westerly 10-foot side setback, where the Zoning Code limits the height of such structures to 6 feet.

7. An 8-foot high wall that encroaches 10 feet into the 10-foot rear setback, where the Zoning Code limits the height of such structures to 6 feet.
 8. An 8-foot high wall that encroaches 10 feet into the easterly 10-foot side setback, where the Zoning Code limits the height of such structures to 6 feet.
 9. An 8-foot-3-inch high fireplace that encroaches 8 feet into the westerly 10-foot side setback, where the Zoning Code limits the height of such structures to 6 feet.
 10. A 129-square-foot (footprint of 148 square feet under roof), 11-foot-4-inch high storage building that encroaches 5 feet into both the 10-foot easterly side setback and 10-foot rear setback, where the Zoning Code limits the height of such structures to 6 feet.
3. The application also indicates the existence of an 8-foot high arbor with a footprint of 48 square feet that encroaches into the required front and easterly side setback, where the Zoning Code limits the height of such structures to 9 feet and a maximum footprint of 16 square feet. The applicant indicated that this arbor will be removed. Therefore, it was not included in the variance request.
 4. The subject property is located within the Single-Unit Residential (R-1-10000) Zoning District and the General Plan Land Use Element category is Single-Unit Residential Detached (RS-D).
 5. The subject property is not located within the coastal zone.
 6. A public hearing was held on June 9, 2011, in the City Hall Council Chambers, 3300 Newport Boulevard, Newport Beach, California. A notice of time, place and purpose of the meeting was given in accordance with the Newport Beach Municipal Code. Evidence, both written and oral, was presented to, and considered by, the Planning Commission at this meeting.

SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

The project is categorically exempt under Section 15303, of the California Environmental Quality Act (CEQA) Guidelines - Class 3 (New Construction or Conversion of Small Structures). The scope of the work is limited to a garage addition and alterations to an existing structure to accommodate a granny unit. Also included is removal or alterations to several detached accessory structures including arbors, walls, a fireplace, and storage building.

SECTION 3. REQUIRED FINDINGS.

For Minor Use Permit No. UP2010-040 (Senior Accessory Dwelling Unit)

Pursuant to Section 20.52.020 F. of the Newport Beach Municipal Code (NBMC), the following findings and decisions shall be met to approve a minor use permit for a granny unit. The findings and facts in support of such findings are listed and discussed below:

Finding:

A. The use is consistent with the General Plan and any applicable specific plan.

Facts in Support of Finding:

- A-1. The Land Use Element of the General Plan designates the site Single-Unit Residential Detached (RS-D). The proposed granny unit is allowed upon approval of a minor use permit within this designation. General Plan Policy LU6.2.4 recognizes that certain provisions of State law supersede local land use regulations, including the ability to add granny units in single-family residential areas. Approval of Minor Use Permit No. UP2010-040, as conditioned and under the circumstances of the case, will not be detrimental to the health, safety, peace, morals, comfort, and general welfare of persons residing and working in the neighborhood.
- A-2. The subject property is not part of a specific plan area.

Finding:

B. The use is allowed within the applicable zoning district and complies with all other applicable provisions of this Zoning Code and the Municipal Code.

Facts in Support of Finding:

- B-1. The proposed granny unit is located in the Single-Unit Residential (R-1-10000) Zoning District, which allows for "Senior Accessory Dwelling Units" upon approval of a minor use permit. The project is designed in accordance with the objectives of Chapter 20.48.200 (Senior Accessory Dwelling Units), which establishes procedures and specific development standards for granny units.
- B-2. The lot is relatively flat, rectangular in shape, and developed with a nonconforming two-story, 2,695-square-foot dwelling. The principal structure is nonconforming because it encroaches into the easterly and westerly required 10-foot side setbacks, 2 feet and 5 feet, respectively. The subject parcel was part of the June 1968 Moden Annexation.
- B-3. The area of the existing structure converted to a granny unit encroaches 2 (two) feet into the easterly side setback. The creation of the granny unit will not alter or intensify this encroachment.

- B-4. The 9,450 square foot lot is large enough to accommodate the additional parking required for the principal dwelling unit and proposed granny unit.

Finding:

- C. The design, location, size, and operating characteristics of the use are compatible with the allowed uses in the vicinity.*

Facts in Support of Finding:

- C-1. The project, as conditioned, will comply with all applicable single-family development regulations in the Zoning Code and specified in Chapter 20.48.200 for granny units, except those existing nonconforming conditions, which will not be intensified or expanded.
- C-2. The proposed garage addition complies with the front setback requirement and with approval of Variance No. VA2011-005 will be allowed to encroach 2 feet into the required 10-foot easterly side setback. This encroachment allows the garage to be constructed in line with the existing building and the side setback line in effect at the time the principal building was constructed.
- C-3. The granny unit will be established with an existing building and does not require new constructions other than the addition of a one-story garage, which can be accommodated as adequate lot area exists.

Finding:

- D. The site is physically suitable in terms of design, location, shape, size, operating characteristics, and the provisions of public and emergency vehicle (e.g., fire and medical) access and public services and utilities.*

Facts in Support of Finding:

- D-1. The site is a residential lot in an existing subdivision and is suitable for the proposed granny unit.
- D-2. Adequate public and emergency vehicle access, public services, and utilities are provided.
- D-3. All improvements associated with the project will comply with all Building, Public Works, and Fire Codes. The project will comply with all ordinances of the City and all conditions of approval.
- D-4. The lot is adequate in size to accommodate the proposed granny unit and the parking required for the principal dwelling unit and the proposed granny unit.

Finding:

- E. Operation of the use at the location proposed would not be detrimental to the harmonious and orderly growth of the City, or endanger, jeopardize, or otherwise constitute a hazard to the public convenience, health, interest, safety, or general welfare of persons residing or working in the neighborhood of the proposed use.*

Facts in Support of Finding:

- E-1. The project has been reviewed and includes conditions of approval to ensure that potential conflicts with the surrounding land uses are minimized to the greatest extent possible. Also, the goal of providing senior housing opportunities will be obtained, while minimizing negative impacts associated with the project.
- E-2. The project includes a residential use located within a residentially designated area. The granny unit is restricted to one or two adult occupants who are 55 years of age or older as regulated by the Zoning Code.

For Variance No. VA2011-005 (Garage Encroachment)

In accordance with Section 20.52.090.F of the Newport Beach Municipal Code, the following findings and facts in support of such findings are set forth for the variance:

Finding:

- A. That there are special or unique circumstances or conditions applicable to the subject property (e.g. location, shape, size, surrounding, topography, or other physical features) that do not apply generally to other properties in the vicinity under an identical zoning classification.*

Facts in Support of Finding:

- A-1. The subject lot is relatively flat, rectangular in shape, and developed with a nonconforming two-story, 2,695-square-foot dwelling. The structure is nonconforming because it encroaches into the easterly and westerly required 10-foot side setbacks, 2 feet and 5 feet, respectively. The subject parcel was part of the June 1968 Moden Annexation.
- A-2. A majority of the surrounding properties also have buildings setback less than the required 10 feet. This nonconforming condition exists throughout the neighborhood as a result of the 1968 annexation and subsequent change to side setback requirements. Additionally, prior to November 25, 2010, an addition to the principal building was allowed to be constructed in the R-1-10,000 District (formally known as R-1-B-2) to the side yard setback line in effect at the time the principal building was constructed. This code provision was not included with the updated Zoning Code, which went into effect in November 2010.

- A-3. The establishment of the granny unit requires a garage addition to accommodate the required parking for the principal dwelling unit and proposed granny unit. Pursuant to Section 20.40.030 (Requirements for Off-Street Parking), at least 1 parking space is required for the granny unit and 2 garage spaces are required for the principal residential dwelling unit. The applicant is proposing a two car garage for the principal dwelling and one parking space for the proposed granny unit. The garage for the principal dwelling will encroach 2 feet into the required 10-foot easterly side setback.

Finding:

- B. That strict compliance with Zoning Code requirements would deprive the subject property of privileges enjoyed by other properties in the vicinity and under an identical zoning classification.*

Fact in Support of Finding:

- B-1. The garage addition would be constructed in line with the existing building and the side setback line in effect at the time the principal building was constructed. This design will be consistent with the development pattern in the neighborhood and will allow for the construction of a garage addition to provide the required parking for the principal dwelling unit.

Finding:

- C. That the granting of the Variance is necessary for the preservation and enjoyment of substantial property rights of the applicant.*

Fact in Support of Finding:

- C-1. With the construction of the garage encroachment, the goal of providing senior housing opportunities will be provided, while providing the required parking.

Finding:

- D. That the granting of the Variance will not constitute a grant of special privilege inconsistent with the limitations on other properties in the vicinity and in the same zoning district.*

Facts in Support of Finding:

- D-1. The granting of the variance allows the property owner to its rights of establishing a garage addition and maintains parity with the setbacks enjoyed by nearby properties.

Finding:

- E. That the granting of the Variance will not be detrimental to the harmonious and orderly growth of the City, or endanger, jeopardize, or otherwise constitute a hazard to the public*

convenience, health, interest, safety, or general welfare of persons residing or working in the neighborhood.

Facts in Support of Finding:

- E-1. As conditioned, the project will, to the greatest extent possible, ensure potential conflicts with the surrounding land uses are minimized. The garage addition is single story and would be at least 8 feet from the neighboring property and would minimize impacts to light and air.
- E-2. The proposed design and location of the garage addition does not interfere with the provision of safe sight distances.
- E-3. The encroachment of the proposed garage addition is consistent with the design of development on neighboring properties along Holiday Road.

Finding:

F. Granting of the Variance will not be in conflict with the intent and purpose of Section 20.52.090 of the Zoning Code, the Zoning Code, the General Plan, or any applicable specific plan.

Facts in Support of Finding:

- F-1. The granting of this variance will not conflict with the Land Use Element of the General Plan, which designates the site for Single-Unit Residential Detached (RS-D) use, or the Zoning Code, which designates the site as Single-Unit Residential (R-1-10,000). These designations provide for the existing single unit dwelling and the proposed senior accessory dwelling upon approval of a minor use permit. The proposed garage encroachment is appurtenance to the dwelling units and is therefore consistent with these designations and will not change the use of the property.
- F-2. The subject property is not located within a specific plan area.

For Variance No. VA2011-005 (Arbors, Walls, Fireplace, and Storage Building)

Facts for Denial:

- 1. The property is relatively flat, rectangular in shape, and comparable in area to other lots in the area. Although, the R-1-10,000 Zoning District does have larger required side setbacks (10-foot) as compared to most other properties in the City, which have setbacks between 3 and 6 feet, the Planning Commission does not consider this a unique circumstance resulting in any necessity to warrant deviating from the applicable development standards for the approval for the arbors, property line walls, fireplace, or storage building. If desired, they can be designed to comply with applicable Zoning Code requirements.

2. Although the arbors, walls, fireplace, and storage building are existing and have not proven detrimental to the property or neighborhood, their existence does not set a precedent for approval of the proposed variance. Furthermore, they are neither required by code nor necessary for the enjoyment of a substantial property right.

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

1. The Planning Commission of the City of Newport Beach hereby approves Minor Use Permit No. UP2010-040 for the granny unit and approves the request for the garage encroachment while denying all other variance requests included in Variance No. VA2011-005, subject to the conditions set forth in Exhibit A, which is attached hereto and incorporated by reference.
2. This action shall become final and effective fourteen days after the adoption of this Resolution unless within such time an appeal is filed with the City Clerk in accordance with the provisions of Title 20 Planning and Zoning, of the Newport Beach Municipal Code.

PASSED, APPROVED AND ADOPTED THIS 9th DAY OF JUNE, 2011.

AYES:

NOES:

RECUSED:

ABSENT:

EXCUSED:

BY: _____
Early McDaniel, Chairman

BY: _____
Michael Toerge, Secretary

EXHIBIT "A"**CONDITIONS OF APPROVAL**

1. The development shall be in substantial conformance with the approved site plan, floor plans, and building elevations stamped and dated with the date of this approval. (Except as modified by applicable conditions of approval.)
2. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
3. The granny unit shall provide a minimum of 600 square feet of floor area and a maximum of 640 square feet as measured from within the surrounding perimeter walls of the unit.
4. The principal dwelling unit or the granny unit shall be continuously occupied by at least 1 person having an ownership interest in the lot.
5. The granny unit shall be limited to the use of one or two persons at least 55 years in age.
6. Prior to the issuance of a building and/or grading permit for a granny unit, the property owner shall record a deed restriction with the County Recorder's Office. The form and content of which shall be satisfactory to the City Attorney and that states that under no circumstances shall the granny unit be rented to or otherwise occupied by any person or persons less than 55 years of age. Said document shall also contain all conditions of approval imposed by this minor use permit. This deed restriction shall remain in effect so long as the granny unit exists on the property.
7. Prior to the final inspection of building permits of the granny unit by a City Building Inspector, the property owner shall submit to the Planning Director the names and birth dates of any and all occupants of the granny unit constructed pursuant to this chapter to verify occupancy by a person or persons of at least 55 years in age. Thereafter, verification will be on an annual basis. Upon any change of tenants, the property owner shall notify the City immediately. This information shall be submitted in writing and contain a statement signed by the property owner certifying under penalty of perjury that all of the information is true and correct.
8. In addition to the parking required for the primary residence, there shall be at least 1 independently accessible parking space for the granny unit. This additional parking space shall be kept free, clear, and accessible for the parking of a vehicle at all times. The independent accessible parking space provided for the granny unit shall meet the minimum size requirements specified by Chapter 20.40 of the Zoning Code. The proposed garage addition shall meet the minimum size requirements specified by Chapter 20.40 for the Zoning Code.
9. The width of the driveway approach shall meet standard Public Work's requirements.

10. Within 60 days after the effective date of the action for Minor Use Permit No. UP2010-026 and Variance No. VA2011-005, the property owner or an authorized representative shall remove or obtain a building permit for the as-built barbeque located in the westerly 10-foot side setback on the rear half of the lot.
11. Within 60 days after the effective date of the action for Minor Use Permit No. UP2011-026 and Variance No. VA2011-005, the property owner or an authorized representative shall obtain a building permit if necessary and remove or reconstruct the items listed below to conform to the requirements of the Zoning Code:
 - a. The 8-foot high arbor with a footprint of 48 square feet that encroaches into the required 15-foot front setback and 10-foot easterly side setback.
 - b. The 8-foot high arbor with a footprint of 48 square feet that encroaches 13 feet into the 15-foot front setback.
 - c. The 8-foot high arbor with a footprint of 48 square feet that encroaches 10 feet into the westerly 10-foot side setback.
 - d. The 8-foot high arbor with a footprint of 48 square feet that encroaches 10 feet into the 10-foot rear setback.
 - e. The 8-foot high arbor with a footprint of 48 square feet that encroaches 10 feet into the easterly 10-foot side setback.
 - f. The 55-inch high brick wall that encroaches 5 feet into 15-foot front setback.
 - g. The 8-foot high wall that encroaches 10 feet into the westerly 10-foot side setback.
 - h. The 8-foot high wall that encroaches 10 feet into the 10-foot rear setback.
 - i. The 8-foot high wall that encroaches 10 feet into the easterly 10-foot side setback.
 - j. The 8-foot-3-inch high fireplace that encroaches 8 feet into the westerly 10-foot side setback.
 - k. The 129-square-foot (footprint of 148 square feet under roof), 11-foot 4-inch high storage shed that encroaches 5 feet into both the 10-foot easterly side and 10-foot rear setback.
12. Upon completion of the private improvements on the site, the applicant shall be responsible for the repair or replacement of public improvements surrounding the subject property that are damaged by the private construction project. The extent of the remedial work includes but is not limited to the repair or reconstruction of curb, gutter, sidewalk, driveway approach, parkway landscaping, and street pavement, unless otherwise approved by the Public Works Inspector.
13. All improvements shall be constructed as required by Ordinance and the Public Works Department.

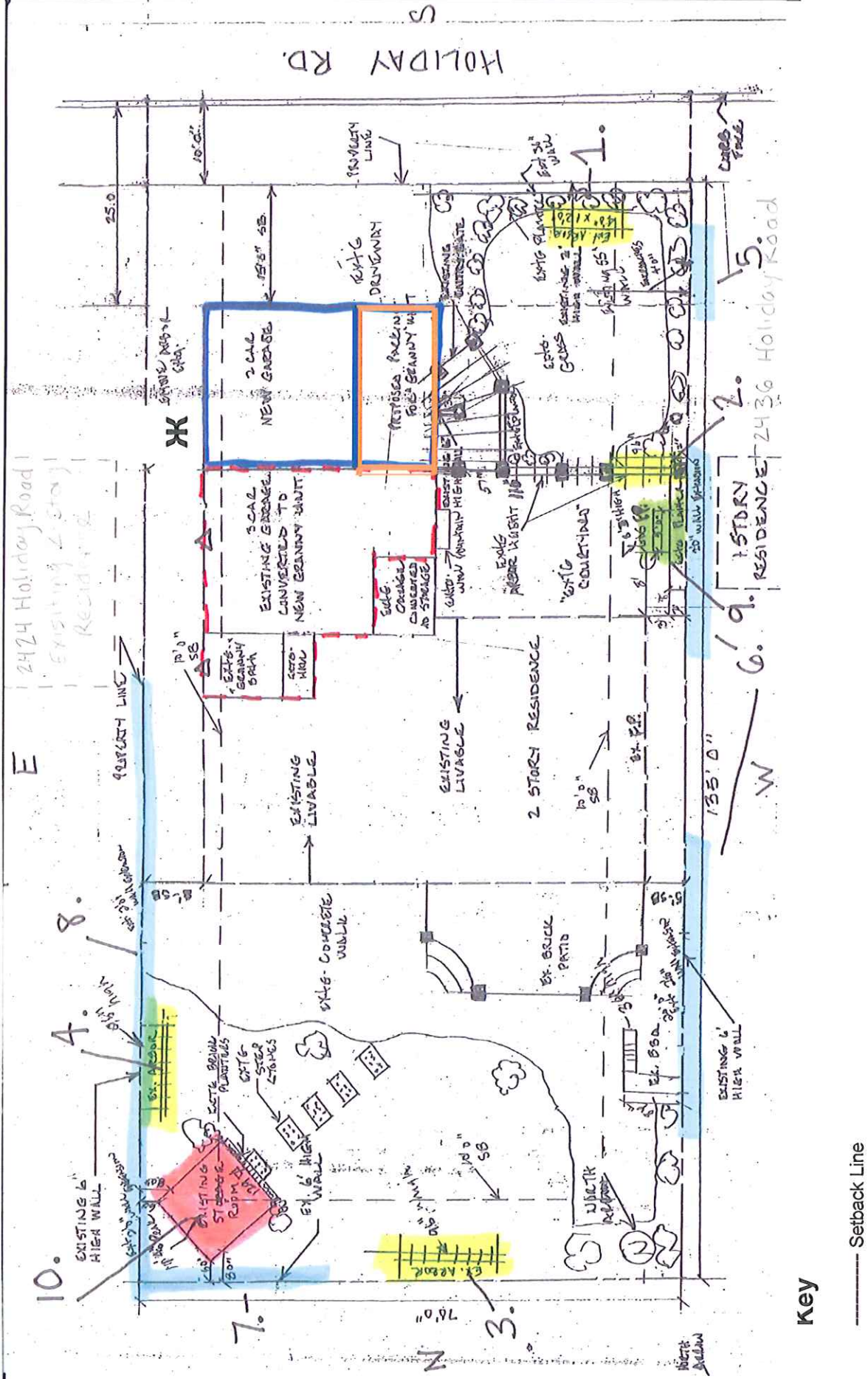
14. An encroachment permit shall be obtained prior to the performance of any work activities within the public right-of-way.
15. The applicant shall comply with all federal, state, and local laws. Material violation of any of those laws in connection with the use may be cause for revocation of the minor use permit.
16. This approval was based on the particulars of the individual case and does not in and of itself or in combination with other approvals in the vicinity or Citywide constitute a precedent for future approvals or decisions.
17. The minor use permit may be modified or revoked by the City Council or Planning Commission should they determine that the proposed uses or conditions under which it is being operated or maintained is detrimental to the public health, welfare or materially injurious to property or improvements in the vicinity or if the property is operated or maintained so as to constitute a public nuisance.
18. Prior to the issuance of a building permit, the applicant shall pay any unpaid administrative costs associated with the processing of this application to the Planning Division.
19. The applicant is required to obtain all applicable permits from the Building Division of the Community Development Department. The construction plans must comply with the most recent, City-adopted version of the California Building Code.
20. Minor Use Permit No. UP2010-040 shall expire unless exercised within 24 months from the date of approval as specified in Section 20.54.060 of the Newport Beach Municipal Code, unless an extension is otherwise granted.
21. To the fullest extent permitted by law, applicant shall indemnify, defend and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to the City's approval of the Pemstein Residence Minor Use Permit and Variance including, but not limited to Minor Use Permit No. UP2010-040 and Variance No. VA2011-005 (PA2010-173). This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by applicant, City, and/or the parties initiating or bringing such proceeding. The applicant shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. The applicant shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition.

Attachment No. PC 2

Project Plans

Site Plan – 2430 Holiday Road

Use Permit No. UP2010-040
Variance No. VA2011-005
(PA2010-173)



✱ 8-foot high arbor with a footprint of 48 square feet that encroaches into the required front and easterly side setback, which will be removed.

Granny Unit and Related Encroachment

--- As-built second dwelling unit to be converted to a granny unit

--- Proposed Two-Car Garage Addition for Principal Dwelling Unit, which encroaches 2 feet into the easterly 10-foot side yard setback

--- Proposed Parking Space for Granny Unit

△ Existing Granny Unit Entries

Other Wall and Structure Variance Requests

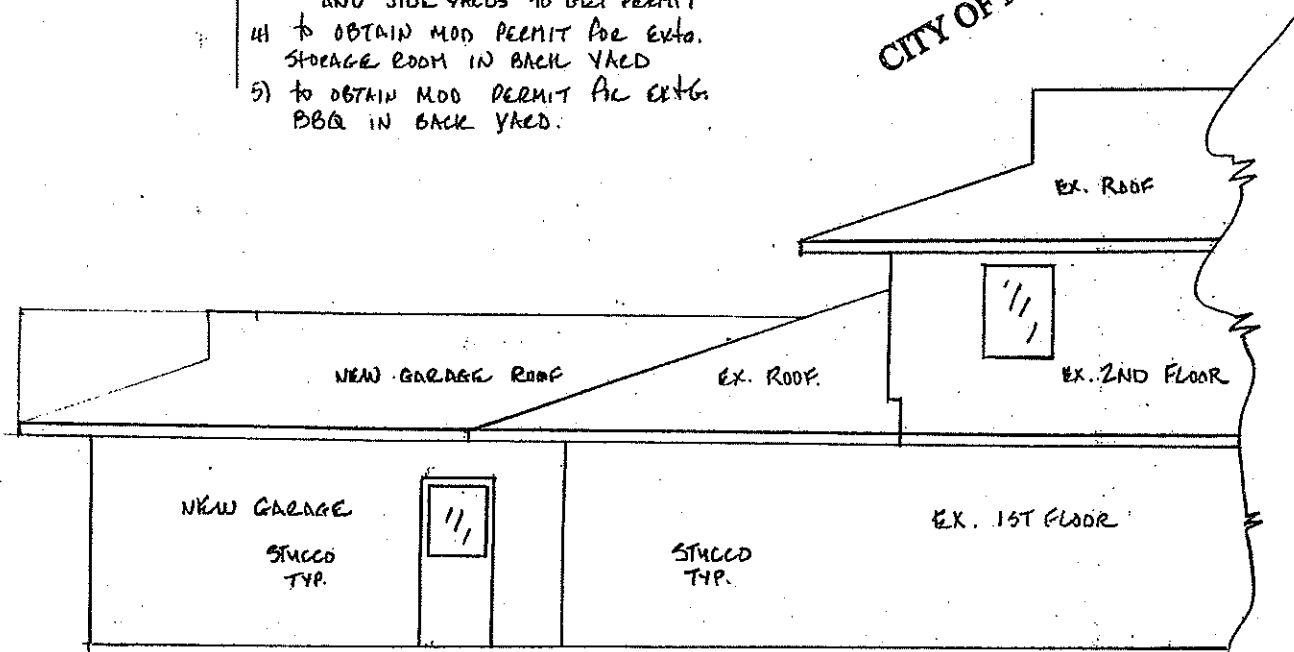
To allow for the retention of the following as-built structures:		Zoning Code Requirement						
Arbors	1. 8-foot high arbor with a footprint of 48 square feet that encroaches 13 feet into the 15-foot front setback*	Pursuant to Section 20.30.110 D.2.b., Arbors, trellises, and similar garden structures may be allowed to encroach into required front, side, and rear setback area subject to the following limits: (1) The maximum footprint of the structure shall not exceed 16 square feet; and (1) The maximum height of the structure shall not exceed 9 feet.						
	2. 8-foot high arbor with a footprint of 48 square feet that encroaches 10 feet into the westerly 10-foot side setback*							
	3. 8-foot high arbor with a footprint of 48 square feet that encroaches 10 feet into the 10-foot rear setback*							
	4. 8-foot high arbor with a footprint of 48 square feet that encroaches 10 feet into the easterly 10-foot side setback*							
	5. 55-inch high brick wall that encroaches 5 feet into 15-foot front setback							
Walls	6. 2-foot wood fence extension mounted on top of the existing 6-foot high block wall, for an overall height of 8 feet that encroaches 10 feet into the westerly 10-foot side setback*	Pursuant to Section 20.30.030 A.1., the maximum height of fences, hedges, and walls is as follows: <table><tr><th>Location</th><th>Maximum Height</th></tr><tr><td>Front setback areas</td><td>42 inches</td></tr><tr><td>Rear and interior side setback areas</td><td>6 feet</td></tr></table>	Location	Maximum Height	Front setback areas	42 inches	Rear and interior side setback areas	6 feet
	Location		Maximum Height					
	Front setback areas		42 inches					
	Rear and interior side setback areas		6 feet					
7. 2-foot wood fence extension* mounted on top of the existing 6-foot high block wall, for an overall height of 8 feet that encroaches 10 feet into the 10-foot rear setback*								
8. 2-foot wood fence extension* mounted on top of the existing 6-foot high block wall, for an overall height of 8 feet that encroaches 10 feet into the easterly 10-foot rear setback*								
Fire-Place	9. To retain an as-built 8-foot 3-inch high freestanding fireplace that encroaches 8 feet into the westerly 10-foot side setback.	Pursuant to Section 20.30.110 D.8.b., freestanding fireplaces (gas only) with a maximum height of 6 feet shall be allowed to encroach into the required side or rear setback area provided a minimum 36-inch clear path of travel is maintained adjacent to any habitable structures.						
Storage Building	10. To retain an as-built 129-square-foot (footprint of 148 square feet under roof) and 11-foot 4-inch high storage building that encroaches 5 feet into both the 10-foot easterly side and 10-foot rear setback.	Pursuant to Section 20.30.110 D.2.a., Accessory structures not more than 6 feet in height and totaling no more than 150 square feet per structure, may be located within a required side or rear setback area other than those abutting an alley.						

*The screen planting growing on the structure further increases the effective height of the element

SCOPE OF WORK

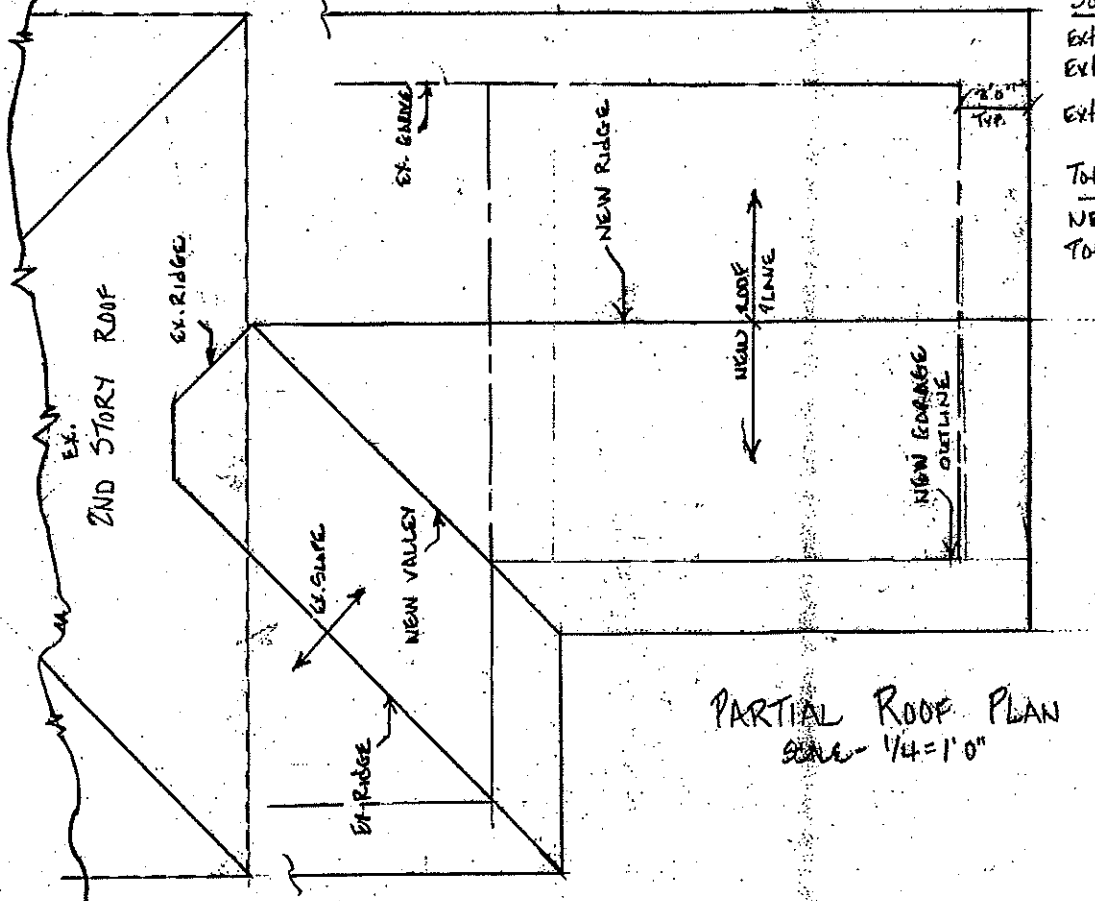
- 1) TO CONVERT EXISTING GRANNY UNIT TO PERMITTED LIVABLE
- 2) TO ADD NEW GARAGE ON TO EXISTING HOME AT EXISTING GARAGE
- 3) TO MODIFY EXISTING ROOFS IN BACK AND SIDE YARDS TO GET PERMIT
- 4) TO OBTAIN MOD PERMIT FOR EXISTING STORAGE ROOM IN BACK YARD
- 5) TO OBTAIN MOD PERMIT FOR EXISTING BBQ IN BACK YARD.

RECEIVED
PLANNING DEPT.
FEB 18 2011
CITY OF NEWPORT BEACH



PARTIAL RIGHT ELEVATION
SCALE: 1/4" = 1'0"

DESIGN DATA:
FRONT SET BACK - 15'0"
RIGHT SIDE SET BACK - 8'0"
LEFT SIDE SET BACK - 5'0"
REAR SET BACK - 0'0"



PARTIAL ROOF PLAN
SCALE: 1/4" = 1'0"

SQUARE FOOTAGE CALCULATIONS:
EXIST. LIVABLE - 2492 SQ FT
EXIST. GARAGE CONVERTED TO GRANNY - 1640 SQ FT
EXIST. GARAGE CONVERTED TO STORAGE - 72 SQ FT
TOTAL LIVABLE - 3204 SQ FT
NEW GARAGE - 400 SQ FT
TOTAL STRUCTURAL SQUARE FOOTAGE - 3604 SQ FT

LEGEND: DESCRIBE LOT 9, TRACT

DRYDEN, B.Y.

LUCAS, ROBERTSON REMODEL

UNIVERSITY OF CALIFORNIA

SITE PLAN

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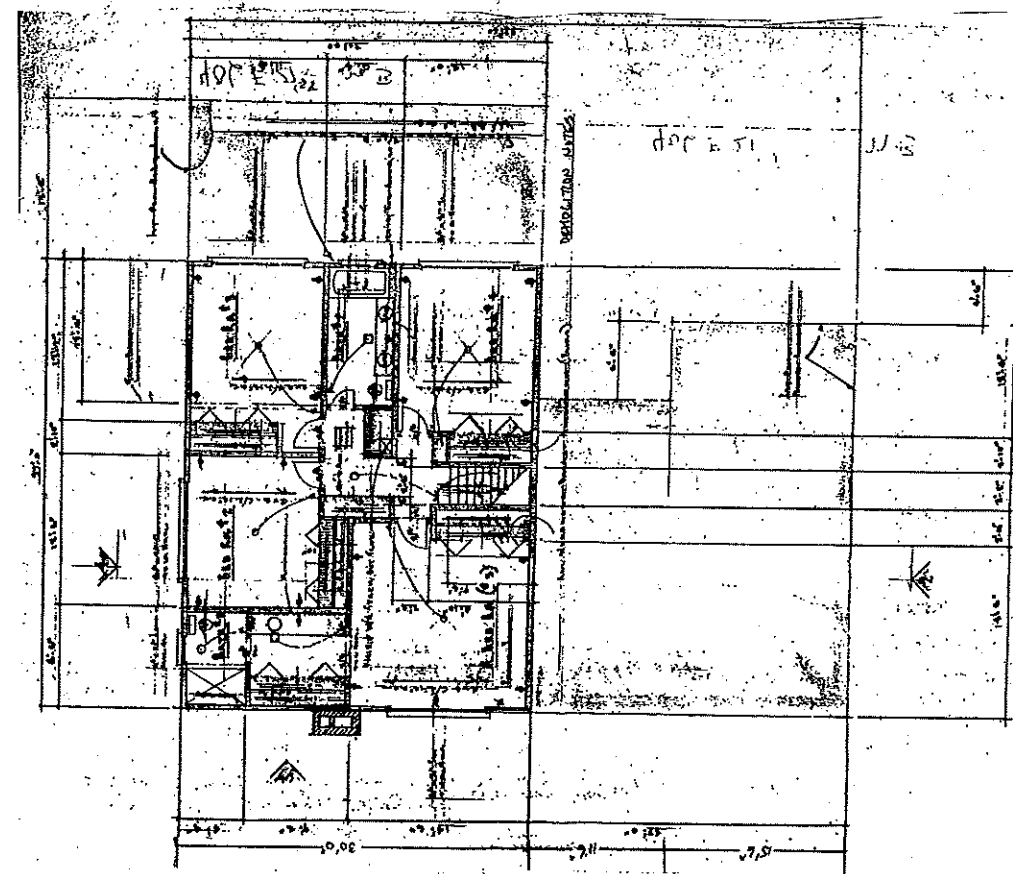
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SECOND FLOOR PLAN
Scale 1/8" = 1'0"

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BOOK PLAN

2130 HOLLYWAY RD.
NEWPORT BEACH 92660

REUSE: 2/18/2011 ~~18~~

DRAWN BY:

DRAWN BY:
WILCO DEMPSTEIN

Harold Lester

Attachment No. PC 3

Project Photos

2430 Holiday Road



Easterly Side Yard between Entry to Granny Unit (2430 Holiday Road) and Adjacent Neighbor located at 2424 Holiday Road)



Item No. 1, 3, and 4 (Arbors)

Item No. 4 is shown but Items No. 1 and 3 are similar in nature

1. An 8-foot high arbor with a footprint of 48 square feet that encroaches 13 feet into the 15-foot front setback, where the Zoning Code limits the height of such structures to 9 feet and a maximum footprint of 16 square feet.
3. An 8-foot high arbor with a footprint of 48 square feet that encroaches 10 feet into the 10-foot rear setback, where the Zoning Code limits the height of such structures to 9 feet and a maximum footprint of 16 square feet.
4. An 8-foot high arbor with a footprint of 48 square feet that encroaches 10 feet into the easterly 10-foot side setback, where the Zoning Code limits the height of such structures to 9 feet and a maximum footprint of 16 square feet.



Item No 2 (Arbor)

An 8-foot high arbor with a footprint of 48 square feet that encroaches 10 feet into the westerly 10-foot side setback, where the Zoning Code limits the height of such structures to 9 feet and a maximum footprint of 16 square feet.



Item No. 5 (Wall)

A 55-inch high brick wall that encroaches 5 feet into 15-foot front setback, where the Zoning Code limits the maximum permitted height to 42 inches.



Items No. 6 and 7 (Walls)

6. An 8-foot high wall that encroaches 10 feet into the westerly 10-foot side setback, where the Zoning Code limits the maximum permitted height to 6 feet.
7. An 8-foot high wall that encroaches 10 feet into the 10-foot rear setback, where the Zoning Code limits the maximum permitted height to 6 feet.



Item No. 8 (Fireplace)

An 8-foot 3-inch high fireplace that encroaches 8 feet into the westerly 10-foot side setback, where the Zoning Code limits the maximum permitted height to 6 feet.



Item No. 9 (Shed)

A 129-square-foot (footprint of 148 square feet under roof), 11-foot 4-inch high storage shed that encroaches 5 feet into both the 10-foot easterly side setback and 10-foot rear setback, where the Zoning Code limits the maximum permitted height to 6 feet.



Attachment No. PC 4

Applicant's Project Description and Justification
Statement

JUSTIFICATIONS AND FINDINGS FOR VARIANCE

PROPERTY LOCATION: 2430 HOLIDAY ROAD
NEWPORT BEACH, CA. 92660

OWNERS: HAROLD PEMSTEIN
DEBORAH LUCAS

DATE: March 22, 2011

RECEIVED BY
PLANNING DEPARTMENT
MAR 22 2011
CITY OF NEWPORT BEACH

The following constitutes the justifications and findings as required for the variance for projects at the above address;

1) TRELLIS/ARBOR in the Front Setback

The location of this arbor is in keeping with other properties in the area. This arbor can be reduced to eight feet in height. This arbor, if kept, will provide great enjoyment for this applicant, and will not be a "special privilege" inconsistent with any other properties in the vicinity. This arbor is more than 8 years old and to date has not been detrimental to the general welfare of the neighborhood. This arbor is not in conflict with the Zoning Code or General Plan.

2) TRELLISES/ARBORS in the Side and Rear Setbacks

The arbor in the front side setback **will be removed** at the outset of construction of the new garage.

The rear yard arbors are in keeping with other properties in the area. These arbors can be reduced to eight feet in height. These arbors, if kept, will provide great enjoyment for this applicant, and will not be a "special privilege" inconsistent with any other properties in the vicinity. These arbors are more than 8 years old and to date have not been detrimental to the general welfare of the neighborhood. These arbors are not in conflict with the Zoning Code or General Plan.

3) FIREPLACE in side Yard Setback

The 5 year old existing fireplace is a gas burning fireplace that meets the code in all areas except in height. The 8-foot 3 inch chimney is necessary to the design and drafting of the heat expelled from this fireplace. In addition, the property adjacent to the property in question consists of a garage with no accessible opening within the entire side adjacent to the fireplace. This fireplace is similar to other fireplaces located within the vicinity. It provides an enjoyment of our property rights and does not grant any special privilege that others don't already enjoy. There is no hazard to the general welfare of others in the vicinity, and does not conflict with the Zoning Code or General Plan.

4) STORAGE SHED in Side and Rear Setback

This storage unit is used **solely** for storage. The quality of the construction and the attractive appearance are in keeping with the high standards of the vicinity as set by the privilege of residency in this area. The primary obstacle of this storage unit is related to height and location. The location, with a minimum of six feet from the property line, gives the placement of this unit the continued use of the remaining portion of the rear yard. The height of this unit gives the ability of ease of access to the property stored in the unit. Other units exist in the vicinity that are not of the same quality and appearance and this unit is not detrimental to the welfare of the residents in the vicinity. The extra height was for the attractive roofing finish and does not conflict with the Zoning Code or The General Plan.

5) WALLS in Side and Rear Setbacks

The two foot additions to the existing six foot block walls adjacent to the property to the east, west, and north were requested by the homeowners adjacent at their specific location. If these additions to the walls that provide privacy for the existing homeowners are a problem for the City; then they **will be** removed during construction of new garage. In so much as they were requested by the current adjacent homeowners, there is no harm to their welfare, they give privileges to the property owners, are similar to other properties in the vicinity, and therefore are not in conflict with the Zoning Code or General Plan.

6) WALL in Front Setback

The attractive brick wall that escalates in height, to under 6 feet at a mere four feet into the required 15 foot setback has existed for approximately 10 years. It has given privacy to the neighbor to the west, has not caused a detriment to the properties or residences in the vicinity, is like many other properties in the vicinity, allows for the privilege and preservation of property rights, and is not in conflict with the Zoning Code or General Plan.